



Social Science Research on Sensitive Topics and the Exemptions

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Content

- Key problem for social science
- Potential solutions
- Potential pitfalls

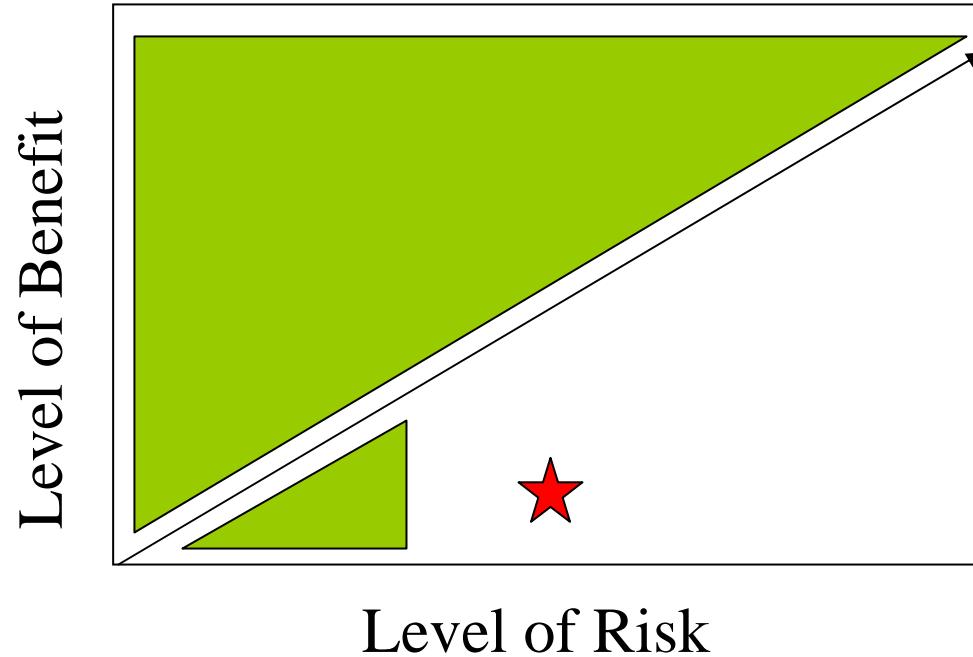


Key Social Science Issue:

- Social science research rarely offers the potential for direct benefit to subjects; consequently, it is typically impossible to justify greater than minimal risk to participants.
- Research on sensitive topics may pose greater than minimal risk.



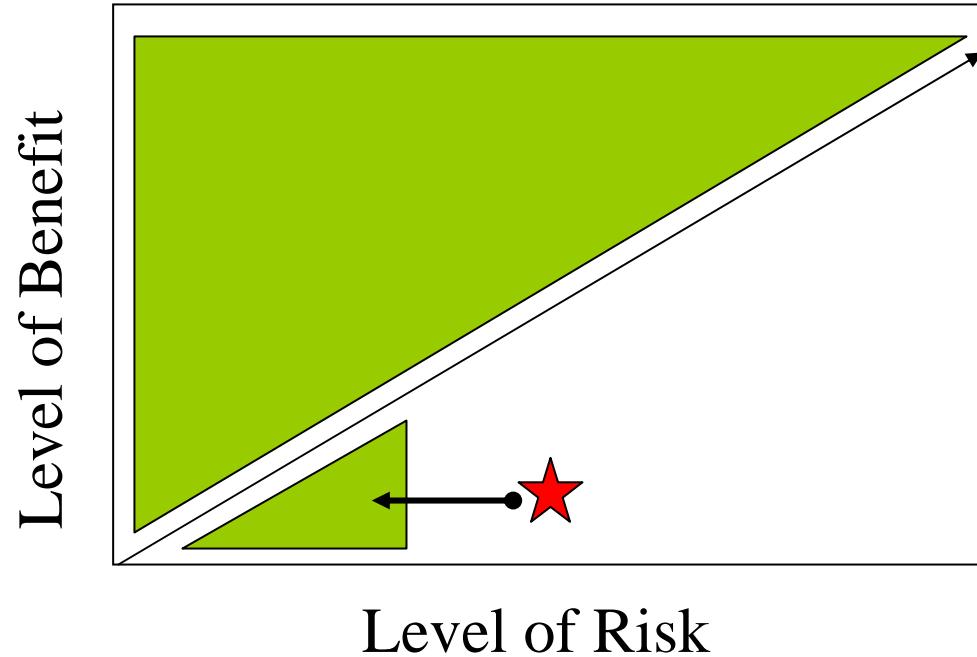
Approvable Research



★ Sensitive Social Science Research



How do we study sensitive issues?



★ Sensitive Social Science Research



Options

- Good Options
 - Exemption 32 CFR 219.101(b)(2)
 - Exemption 32 CFR 219.101(b)(3)(ii)
- Frequently Misused Option
 - Exemption 32 CFR 219.101(b)(5)



Exemption 219.101(b)(2):

- Research [with non-incarcerated adults] involving the use of educational tests, survey procedures, interview procedures or observations of public behavior, **unless** (i) information is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects;....



In other words....

- Research using the listed procedures in which the subjects [excluding minors or incarcerated individuals] **can not be identified**, directly or indirectly, can be exempt from 32 CFR 219.
 - Primary Risk: Breach of Privacy or Confidentiality
 - Solution: Participants are not identifiable



Key Point Regarding (b)(2):

- Correct application of this exemption hinges on the quality of the research procedures and the ability of the researchers to implement the procedures in a manner ensuring that participants can not be identified.
- If the procedures do not ensure subjects are non-identifiable, then the study is not exempt.



Final Notes re (b)(2):

- 10 USC 980 requirements do not apply to exempt research.
- Privacy Act and Privacy Rule (HIPAA) requirements do not apply to non-identifiable data.
- The research is **not exempt** from Washington Headquarters Service (WHS) licensure or Office of Management and Budget (OMB) Paperwork Reduction Act (PRA) requirements when otherwise applicable.



We need identifiers!!!





Exemption 219.101(b)(3)(ii):

- Research [with non-incarcerated individuals] involving the use of educational tests, survey procedures, interview procedures, or observations of public behavior that is not exempt under paragraph (b)(2) of this section, if ...
...(ii) federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.



Statute vs. Certificate

- Certificate of Confidentiality
 - Issued by Department of Health & Human Services
 - Protects research data from forced disclosure
 - Does not prohibit voluntary disclosure
 - Upheld in New York State court, never tested in Military Court
- Confidentiality Statute
 - Provided to specific federal agencies by law
 - Protects research data from forced disclosure
 - Prohibits voluntary disclosure of research data with civil or criminal penalties



Federal Confidentiality Statutes

- Department of Justice
 - Office of Justice Programs
- Department of Education
 - National Center for Educational Statistics
- Department of Commerce
 - Census Bureau

New!!

- **Title V of the E-Government Act of 2002**
 - Confidential Information Protection and Statistical Efficiency Act (CIPSEA)



Subtitle A of CIPSEA

- Applies to all Federal agencies that acquire information under carefully prescribed conditions for exclusively statistical purposes.
- Willful disclosure of the information is a Class E Felony with imprisonment for up to 5 years and fines up to \$250,000.
- Information acquired by Federal agencies under CIPSEA should qualify for exemption under 219.101(b)(3)(ii).



Sentence Parsing

- Acquired = information can be acquired directly from individuals (e.g., surveys) or through secondary sources (e.g., State government agencies)
- Federal agencies = unless a designated “statistical agency,” information must be acquired directly by the agency. CIPSEA can not be invoked by contract agencies.
- Should = inconsistent response across Federal OGCs.



Subtitle A of CIPSEA Cont

- Statistical Agencies
 - Apply to OMB for Statistical Agency Status
 - Can designate agents
 - Other DoD groups can partner with the designated statistical agencies to invoke CIPSEA
 - CIPSEA provides strongest possible confidentiality protection making it possible to study highly sensitive topics.



Implementation Guidance

- Office of Management and Budget implementation guidance recently published in the Federal Register for comments.
- The guidance is posted on the web:
www.whitehouse.gov/omb/inforeg/statpolicy.html



An exemption that sounds good, but



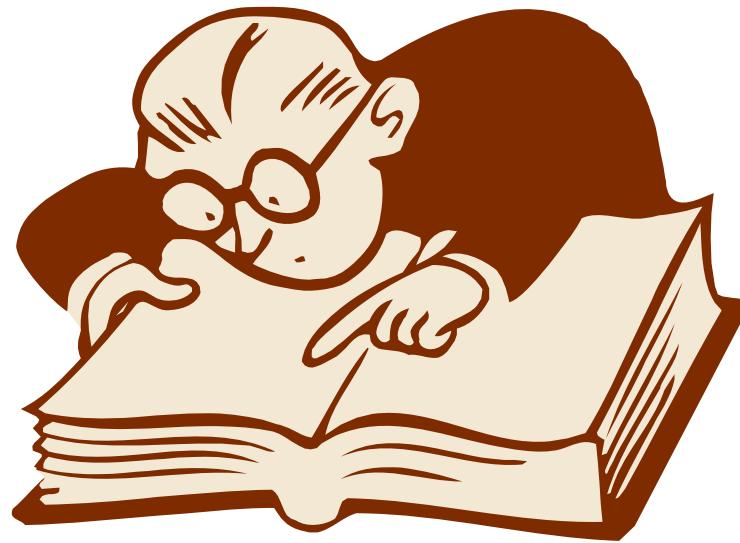


Exemption 101.219(b)(5)

- Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine:
 - (i) Public benefit or service programs;
 - (ii) Procedures for obtaining benefits or services under those programs; ...



48 Fed Register 9266-9270



Consult Handout RE: 48 Federal Register 9266-9270



48 Fed Register 9266-9270

- Federal demonstration project (10 USC 1092) or conducted under other federal statutory authority;
- No significant physical invasions or intrusions upon the privacy of participants;
- Research does not differ substantially from normal program activity.



Most Importantly!!

- Exemption determinations must be made by qualified individuals (as defined by your component).
- Exemption determinations may not be made by the researcher or anyone else with a vested interest in the research.



Contact Information

For specific questions about applying the requirements to social science research, contact your component headquarters office.

For questions about this presentation contact:
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Thank You!

- Thank you for attending the training program.
- Please hand your evaluation sheets to Francine at the door as you leave.